

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAIDEN KASSEM, et al.,

Plaintiffs,

v.

ANTONY J. BLINKEN, et al.,

Defendants.

No. 1:21-cv-01400-DAD-HBK

ORDER DENYING PLAINTIFFS' REQUEST
FOR A COURT ORDER FINDING
DEFENDANTS IN CONTEMPT AND
IMPOSING SANCTIONS

(Doc. No. 14)

This matter is now before the court on plaintiffs' request for an order finding defendants in contempt of this court's September 23, 2021 order (Doc. No. 10) and imposing sanctions. (Doc. No. 14.) Pursuant to General Order No. 617 addressing the public health emergency posed by the coronavirus pandemic, the court takes this matter under submission to be decided on the papers, without holding a hearing. For the reasons set forth below, the court will deny plaintiffs' pending request.

On September 23, 2021, this court issued an order granting plaintiffs' motion for a preliminary injunction and ordering defendants to:

[R]eview the documents, schedule a consular visa interview, and issue a decision on the visa applications of Osamah Abdulhameed Muthana Nasser and all derivatives in defendants' case number 2021AS35359, on or before noon California time, September 28, 2021. The adjudication must occur before the end of the fiscal year on September 30, 2021[.]

1 (Doc. No. 10 at 14.) On September 28, 2021, defendants filed a notice of compliance informing
2 the court that plaintiffs received an in-person interview with a consular officer at the Djibouti
3 Embassy and were denied diversity visas because “the applicant failed to include his spouse and
4 children on the form as required by [8 U.S.C. § 1154(a)(1)(I)(iii); 22 C.F.R. § 42.33(b)(1)].”
5 (Doc. No. 13 at 2.) On the same day, plaintiffs filed their pending request, arguing that the
6 consular officer’s grounds for refusal were “legally and completely inapplicable to the applicants”
7 and that such denial was made in bad faith. (Doc. No. 14 at 1.) Plaintiffs contend that the
8 requirement that visa applications must include a visa applicant’s spouse and children “applies
9 explicitly to immediate relative and family-sponsored petitions,” and is thus an invalid basis upon
10 which to deny plaintiffs’ diversity-based visa applications. (*Id.* at 5–6.) Plaintiff Osamah also
11 declares that he “told the person who prepared and submitted his diversity visa entry application
12 that he was married and had two children,” and he tried explaining this to the consular officer
13 conducting the interview, but the officer would not listen to him or let him explain. (*Id.* at 6–7;
14 Doc. No. 14-1 at 1–3.)

15 Section 204(a)(1)(I)(iii) of the Immigration and Nationality Act of 2011 (“INA”) holds
16 that a diversity visa petition “shall be in such form as the Secretary of State may by regulation
17 prescribe and shall contain such information and be supported by such documentary evidence as
18 the Secretary of State may require.” 8 U.S.C. § 1154(a)(1)(I)(iii). Federal regulations
19 specifically dictate that diversity visa petitions, such as those at issue here, must include “[t]he
20 name[s], date[s] and place[s] of birth and gender of the petitioner’s spouse and child[ren], if any,
21 (including legally adopted and step-children)[.]” 22 C.F.R. § 42.33(b)(1)(v). The U.S. Foreign
22 Affairs Manual also states that “[a]pplicants who failed to list properly on his or her [diversity
23 visa] lottery entry a spouse or child who was required to be listed are ineligible for a [diversity
24 visa] for failure to comply with regulations prescribed pursuant to INA § 204(a)(1)(I)(iii). The
25 appropriate basis of refusal is INA § 204(a)(1)(I)(iii).” 9 FAM 502.6-4(U)(b)(2)(c)(iii).

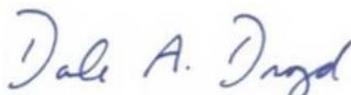
26 Although plaintiff Osamah may have instructed his preparer to list his spouse and minor
27 children on his diversity visa entry application, he has offered no evidence showing that his
28 spouse and children were in fact listed on the submitted application. Nor have plaintiffs made

1 any argument as to why 22 C.F.R. § 42.33(b)(1)(v) does not control here. As such, it appears that
2 22 C.F.R. § 42.33(b)(1)(v) provides a valid basis for the denial of plaintiffs' diversity visa
3 applications, and that defendants have complied with this court's September 23, 2021 order to
4 review plaintiffs' documents, schedule a consular visa interview, and issue a decision on
5 plaintiffs' visa applications. (*See* Doc. No. 10 at 14.) Accordingly, plaintiffs have not established
6 that defendants failed to comply with this court's September 23, 2021 order, let alone that they
7 have done so in bad faith. To the extent that plaintiffs disagree with the denial of their visa
8 applications, the proper remedy is to pursue an appeal from the denial. That remedy is sufficient
9 in light of the absence of any indication of a bad faith refusal to comply with this court's prior
10 order.

11 Accordingly, plaintiffs' request for a court order finding defendants in contempt of this
12 court's September 23, 2021 order and imposing sanctions (Doc. No. 14) is denied.

13 IT IS SO ORDERED.

14 Dated: September 29, 2021


15 UNITED STATES DISTRICT JUDGE

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